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National Cable Television Association

Legal Department

1724 Massachusetts Avenue, Northwest  
Washington, D.C. 20036 1969  
202 775-3664

March 5, 1993

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.,  
Room 222  
Washington, D.C. 20554

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MAR 5 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: MM Docket No. 92-261

Dear Ms. Searcy:

In "Reply Comments" filed yesterday in the above-captioned proceeding, a typographical error resulted in the dropping of approximately two lines from the text of the second full paragraph that begins on page one. The corrected paragraph, with the revision in bold type, should read as follows:

I. THE COMMISSION SHOULD DEFINE A "CORPORATE OFFICER"  
AS A "SENIOR EXECUTIVE"

The Commission proposes to define a "corporate officer" as an "Employee with official authorization to represent the company in a fiduciary capacity." In our comments, NCTA explained that this definition would be overly broad because it would encompass numerous employees who, while holding positions of confidence or trust, are not at the top of the company. So, for example, in-house counsel, persons with authority to sign checks for even minor amounts, local general managers and supervisors of accounting could qualify as fiduciaries, but most do not exercise a level of responsibility generally associated with corporate officers. The corporate officer category should be reserved for a company's top officials which, in different companies, may have different titles.

An original and nine copies of the corrected comments are enclosed.

I regret any inconvenience that may have been caused by this inadvertent error.

Sincerely,

David L. Nicoll

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MAR 5 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 92-261

## Equal Employment Opportunities

Daniel L. Brenner  
David L. Nicoll  
1724 Massachusetts Ave., N.W.  
Washington, D.C. 20036  
(202)775-3664

March 4, 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 22 of	)	MM Docket No. 92-261
the Cable Television Consumer	)	
Protection and Competition Act	)	
of 1992	)	
	)	
Equal Employment Opportunities	)	

REPLY COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION

The National Cable Television Association (NCTA), by its attorneys, hereby replies to comments submitted on the cable equal employment opportunity ("EEO") rules. NCTA's reply comments are limited to two points. First, the job category of "corporate officer" should be defined as a "senior executive." Second, telephone companies that provide video dialtone, and multichannel customer-programmers that use capacity on these systems, should be held subject to the cable equal employment opportunity ("EEO") rules.

I. THE COMMISSION SHOULD DEFINE A "CORPORATE OFFICER" AS A "SENIOR EXECUTIVE"

The Commission proposes to define a "corporate officer" as an "Employee with official authorization to represent the company in a fiduciary capacity." In our comments, NCTA explained that this definition would be overly broad because it would encompass numerous employees who, while holding positions of confidence or

trust, are not at the top of the company. So, for example, in-house counsel, persons with authority to sign checks for even minor amounts, local general managers and supervisors of accounting could qualify as fiduciaries, but most do not exercise a level of responsibility generally associated with corporate officers. The corporate officer category should be reserved for a company's top officials which, in different companies, may have different titles.

For that reason, NCTA proposed that the Commission define a "corporate officer" as

a senior executive, as defined by the company, with responsibility for the overall operation of the company. "Corporate officers" may include, but are not limited to, persons with the title of Chairman of the Board, Chairman of the Executive Committee, President, Executive Vice President, Senior Vice President, Vice President, Vice President for Marketing, Vice President for Programming, Vice President for Human Resources, Secretary, Treasurer and General Counsel. Different companies may employ different titles for particular positions. Corporate officers are generally located at corporate headquarters rather than at the local level. The general manager of a local cable system will normally not be treated as a corporate officer for purposes of these rules.

This definition, NCTA explained, would more accurately reflect the role of corporate officers in the cable industry, and avoid duplication of other positions.

Other parties also endorse a more narrowly circumscribed definition of "corporate officer," but suggest different approaches. Time Warner Cable, for example, suggests the

Commission adopt the SEC's definition of "officer."<sup>1/</sup> Tele-Communications, Inc. proposes that corporate officers be defined as fiduciaries not qualifying in other categories.<sup>2/</sup> While NCTA favors the approach described above, we believe that these proposals are preferable to the definition of a corporate officer as a fiduciary, because they recognize that defining a corporate officer as a fiduciary will result in double counting and coverage of many employees in addition to a corporation's senior executives.

II. TELEPHONE COMPANIES THAT PROVIDE VIDEO DIALTONE, AND MULTI-CHANNEL CUSTOMER-PROGRAMMERS, ARE SUBJECT TO THE CABLE EEO RULES

The 1992 Cable Act subjects all "multichannel video programming distributors" to the cable EEO rules. Cable operators, MMDS systems, DBS providers and TVRO systems are specifically covered by this term in the Act. But other multichannel video programming distributors, not explicitly identified, but nevertheless fall within the scope of the Act's definition.

In particular, NCTA in its comments, urged the Commission to classify video dialtone systems, and customer-programmers leasing multiple channels on these systems, as multichannel video programming distributors. We contended that video dialtone

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1/ Comments of Time Warner Cable, Feb. 16, 1993, at 3-4.

2/ Comments of Tele-Communications, Inc., Feb. 16, 1993, at 6-8.

systems and multichannel customer-programmers will distribute video programming and thereby qualify under the statutory definition. We also explained that the goal of the EEO provision as described in 1984 -- to assure that program service will be responsive to a public consisting of a diverse array of population groups -- should as a matter of policy apply to video dialtone and other media of mass communication.

Bell Atlantic and GTE try to avoid EEO responsibilities. Bell Atlantic contends that "the Act's EEO rules do not apply to common carriers providing video dialtone service."<sup>3/</sup> GTE similarly maintains that a "video dialtone carrier" is not subject to EEO requirements.<sup>4/</sup> But Bell Atlantic and GTE are not "just carriers."

Having sought and obtained the additional noncarrier flexibility associated with video dialtone, Bell Atlantic and GTE should accept the corresponding responsibilities. Under the Video Dialtone Order, telcos are authorized to engage in many unregulated functions that, when combined with the regulated transmission authority, make them "cable operators" at least in so far as the purposes of the Act's EEO provisions are concerned (and well beyond that as well.)

A facility consisting of a set of closed transmission paths that is designed to provide video programming to multiple

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3/ Comments of Bell Atlantic, Feb. 16, 1993, at 2.

4/ Comments of GTE, Feb. 16, 1993, at 4-5.

subscribers is a cable system.<sup>5/</sup> Under the 1984 Cable Act, a person who "controls or is responsible for, through any arrangement, the management or operation of a cable system" is a cable operator.<sup>6/</sup> A telephone company providing video dialtone, because it is responsible for the management and operation of a cable system "through any arrangement", is a "cable operator." As cable operators, Bell Atlantic and GTE are no longer "just carriers."

The intent of the EEO provision is to assure that "program service will be responsive to a public consisting of a diverse array of population groups."<sup>7/</sup> By extending the coverage of the provision to all "multichannel video programming distributors," Congress recognized the coming of new multichannel media, and directed that the rules apply to these media. Telephone companies plan to invest billions of dollars on video dialtone systems, and these systems may eventually become an important means of multichannel video programming distribution. The Commission should, therefore, make clear as a matter of law and policy that video dialtone systems and multichannel customer-programmers are subject to the EEO rules.

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5/ See 47 U.S.C. Sec. 522(6).

6/ See 47 U.S.C. Sec. 522(4)(B).


7/ House Committee on Energy and Commerce, Cable Franchise Policy and Communications Act of 1984, H.R. Rep, No. 934, 98th Cong., 2d Sess. 85 (1984).

CONCLUSION

For the foregoing reasons, the Commission should define a "corporate officer" as a "senior executive," and it should clarify that video dialtone providers and multichannel customer-programmers are subject to the EEO rules.

Respectfully submitted,

NATIONAL CABLE TELEVISION  
ASSOCIATION, INC.

By   
Daniel L. Brenner  
David L. Nicoll

ITS ATTORNEYS  
1724 Massachusetts Avenue, N.W.  
Washington, D.C. 20036  
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